

IN THE SUPREME COURT OF MISSISSIPPI
No. 2015-FC-01317-SCT

ROBERT SWINDOL

APPELLANT

v.

AURORA FLIGHT SCIENCES
CORPORATION

APPELLEE

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF AMICUS
CURIAE BY THE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.**

This Court “generally allows . . . interested . . . organizations the right to appear in matters of public interest,” *Taylor v. Roberts*, 475 So.2d 150, 151 (Miss. 1985), and it should grant the National Rifle Association of America, Inc. (the “NRA”) the right to appear in this important matter. The NRA meets the requirements for filing an amicus brief because its proposed brief—as demonstrated by the brief itself—presents “matters of fact or law that may otherwise escape the court’s attention.” MISS. R. APP. P. 29(a)(3). In addition, the NRA “has substantial legitimate interests that will likely be affected by the outcome of the case . . . which . . . will not be adequately protected by those already parties to the case.” MISS. R. APP. P. 29(a)(4).

The NRA is America’s foremost and oldest defender of the fundamental right to keep and bear arms. Founded in 1871, the NRA has approximately five million members and is America’s leading provider of firearms marksmanship and safety training for civilians. The NRA has a vital interest in the outcome of this proceeding. Mississippi law provides that a “private employer may not establish, maintain, or enforce any policy or rule that has the effect of prohibiting a person from transporting or storing a firearm in a locked vehicle in any parking lot, parking garage, or other designated parking area.” MISS. CODE § 45-9-55(1). But the defendant in this case—Aurora Flight Sciences Corporation—insists that employers are free to violate the plain terms of this

unambiguous statutory prohibition with impunity and that the law provides no judicial recourse for law-abiding, responsible employees fired pursuant to a company policy forbidding employees from storing firearms in their locked automobiles parked in the company's lot.

The NRA has tens of thousands of members in Mississippi, and it actively supported the passage of Mississippi's law and others like it. *See, e.g., Governor Barbour Signs Castle Doctrine, Other NRA-Backed Gun Provisions Into Law*, NRA INSTITUTE FOR LEGISLATIVE ACTION, Mar. 29, 2006, <https://goo.gl/emdc6i>. And it consistently has sought to defend those laws in court. *See Mitchell v. University of Kentucky*, 366 S.W.3d 895, 896–97 (Ky. 2012) (NRA participated as amicus); *Ramsey Winch Inc. v. Henry*, 555 F.3d 1199 (10th Cir. 2009) (same); *Florida Retail Fed'n, Inc. v. Attorney General of Fla.*, 576 F. Supp. 2d 1301, 1302 (N.D. Fla. 2008) (NRA intervened as defendant). The NRA seeks to do the same here.

A ruling in Aurora's favor would vitiate the rights of NRA members and the other law-abiding citizens of this State and negate the efforts of the Mississippi Legislature to protect those rights. What is more, the effects of such a ruling could extend beyond Mississippi, as courts in other states may look to any ruling by this Court as persuasive authority. In recent years, the legislatures of more than 20 states have taken steps to protect the right of employees to keep firearms in locked vehicles parked in employer parking lots. *See* Ethan T. Stowell, *Note: Top Gun: The Second Amendment, Self-Defense, and Private Property Exclusion*, 26 REGENT U. L. REV. 521, 522 n.9 (2013–14); *see also* ALA. CODE § 13A-11-90; IDAHO CODE § 5-341; MO. ANN. STAT. § 571.030(6); NEB. REV. STAT. § 69-2441(3); OHIO REV. CODE § 2923.126(C)(2)(a); TENN. CODE §§ 39-17-1313, 50-1-312; WIS. STAT. § 175.60(15m). While some of those laws have express provisions addressing remedies, many, like Mississippi's, do not. It is imperative that the courts not effectively repeal these laws by refusing to enforce them against law-breaking employers.

The interests at stake are not abstract. From 2004 to 2008, for example, over 400,000 non-fatal violent crimes were perpetrated in parking lots and garages nationwide. See Bureau of Justice Statistics, *Location*, OFFICE OF JUSTICE PROGRAMS, <http://goo.gl/vPRqug>. And in 2008 alone, approximately 178,000 non-fatal violent crimes were perpetrated upon victims on the way to or from work. See BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION IN THE UNITED STATES, 2008 STATISTICAL TABLES, tbl. 64 (Mar. 2010). These numbers likely would have been even higher were it not for the defensive use of firearms. The leading study found “that each year in the U.S. there are about 2.2 to 2.5 million [defensive gun uses] of all types by civilians against humans,” and the data indicate that 4.5% of these incidents—about 100,000 a year—take place in parking lots or commercial garages. See Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. CRIM. L. & CRIMINOLOGY 150, 164, 185 tbl. 3 (1995). Furthermore, Mississippi enacted the law at issue here in 2006. From 2003 to 2005, there were an average of 12 occupational shooting homicides a year in the State; from 2007 to 2010 that average dropped to 6. See Bureau of Labor Statistics, *State Occupational Injuries, Illnesses, and Fatalities*, UNITED STATES DEPARTMENT OF LABOR, <http://goo.gl/aE3hqB> (click on links for each year to see annual data).

For the foregoing reasons, the NRA respectfully requests leave to file its proposed amicus brief.

Dated this the 28th day of September, 2015.

Respectfully submitted,

National Rifle Association of America, Inc.

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**Pro hac vice applications pending*

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the MEC system, which sent notification of such filing to the following:

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Further, I hereby certify that I have mailed by United States mail the document to the following non-MEC participants:

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This the 28th day of September, 2015.

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